UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/32
12 May 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Item 9 of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Letter dated 8 October 1996 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the Office of the United Nations at Geneva addressed to the Chairman of the forty-eighth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

I have the honour to enclose the response by the Government of the United Kingdom of Great Britain and Northern Ireland to allegations made by the International Federation of Human Rights during the forty-eighth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The Government of the United Kingdom requests that the enclosed response be circulated as an official document of the Sub-Commission.

(Signed): Nigel C.R. WILLIAMS
Ambassador
Permanent Representative

GE.97-12611 (E)

1. With regard to paragraph 3 of the statement by the International Federation of Human Rights (FIDH) contained in document E/CN.4/Sub.2/1996/NGO/30, the Government of the United Kingdom believes that the powers contained in the Emergency Provisions Act, and those in the Prevention of Terrorism Act which apply to Northern Ireland, continue to be necessary whilst the terrorist organizations remain in being and have shown that they are capable of resuming violence at short notice.

2. Progress had been made in the peace process, but the London and Manchester bombings made it clear that the peace had yet to become fully established. The terrorist organizations remain intact with their structures in place and their weapons still available at any time to return to violence. In addition, there have been murders, kidnappings, intimidation attacks and arsons throughout the period of the "ceasefires".

3. The Government's conclusion is that it is still too early to remove completely the protection which that emergency legislation has provided although this is the eventual aim to which the Government is working. Meanwhile, it remains open to Ministers to ask Parliament to suspend or repeal individual sections of the current Act depending on security advice.

4. The provisions currently found in the Northern Ireland (Emergency Provisions) Act 1991 have been renewed by means of a fresh Act of Parliament for a period of two years pending consideration of the inquiry into counter-terrorism legislation which will report later in the year.

5. The European Court of Human Rights held in 1993 that the power to detain terrorist suspects for up to seven days before being brought before a judge was a measure that was no more than was strictly necessary in the exigencies of the emergency situation that then existed (Brannigan & Mcbride v. United Kingdom). The Government's view is that such a measure is still justified and thus retain its derogations to article 5 of the European Convention on Human Rights and article 9 of the International Covenant on Civil and political Rights.

6. Concerning paragraph 6 of the statement by FIDH, the United Kingdom Government believes section 47 of the Northern Ireland (Emergency Provisions) Act 1996 provides for a person detained under the terrorism provisions to ask to consult a solicitor privately. A duty is placed on the police to inform those detained of this right and any request is recorded in writing unless it is made whilst the detained person is at court. Anyone making a request to consult a solicitor must be permitted to do so as soon as practicable, except to the extent that delay is permitted by this section 47.

7. The grounds for authorizing delay of up to 48 hours in the exercise of the right to consult a solicitor is an exceptional power. The concern is that in certain circumstances, it may be of great benefit to the men and women of violence. Just as significantly, there is a risk that this information could be extracted under duress - for example, by threats against a solicitor's family. This is not intended in any way to be a slight on the legal

profession in Northern Ireland. It is a recognition of the way in which terrorist organizations work, and their ruthlessness. It is worth noting that the number of requests for access to legal advice which are delayed have been reducing in recent years to the extent that the majority of requests are allowed immediately.

8. The decision of the European Court of human Rights in the Murray case upheld the right of a court to draw adverse inferences from the accused's silence in situations which clearly called for explanation from him. The court accepted that drawing inferences from silence in appropriate circumstances is a matter of common sense. On the narrow question of denial of access to a legal adviser at a time when inferences from silence might be drawn, the Court found against the United Kingdom. At present the Government is studying the implications of the judgement.

9. In paragraph 7 of their statement the FIDH raise questions about the death of a prisoner, Mr. McDonnell, while in police custody. Mr. McDonnell's body was discovered by staff in his cell on 30 March 1996 and after unsuccessful attempts at resuscitation he was pronounced dead at 4.16 p.m.

10. The Royal Ulster Constabulary (RUC) routinely conduct an independent investigation into the death of any person in prison custody and provide a report to the coroner. Mr. McDonnell's death will be the subject of a coroner's inquest and a finding will be reached by a jury composed of members of the general public. Until the inquest has been held and a verdict returned we are unable to comment further.

11. In paragraph 8 of FIDH's statement, allegations of collusion between security forces and paramilitaries are raised. The British Government is absolutely opposed to collusion of any form, and will act resolutely to prevent both it and material assistance to terrorist organizations by any member of the security forces.

12. Any individual found assisting in the commission of terrorist acts will face criminal trial and prosecution. All such allegations are, and will be, rigorously investigated. The RUC have consistently demonstrated their determination to prosecute those involved in Loyalist terrorism in circumstances where sufficient evidence can be brought to obtain a conviction. There is no difference in this regard between the investigation of Loyalist or Republican crimes.

13. In response to a number of allegations in 1989 of collusion between the security forces and Loyalist paramilitary organizations, the Chief Constable of the RUC asked Mr. John Stevens, Deputy Chief Constable of Cambridgeshire, to conduct an independent investigation and to make recommendations on any relevant matters. The investigation was the largest police inquiry of its kind ever carried out in the United Kingdom. A summary of Mr. Stevens' report was published. This concluded:

> "The detailed analysis of the security force documents recovered during the inquiry and the evidence secured made it clear that passing of

information to paramilitaries by security force members has been restricted to a small number of individuals. It is neither widespread nor institutionalized."

14. A number of prosecutions were instigated as a result of the Stevens inquiry. In addition, Mr. Stevens' report made a series of recommendations on measures to prevent the unauthorized disclosure of classified material, to improve recruitment procedures and to enhance the detection of any misconduct in the future. Those recommendations have been acted upon.

15. Her Majesty's Inspector of Constabulary will undertake a review of the Royal Ulster Constabulary's procedures and training for handling public order situations as part of this year's formal inspection process. This was announced by the Secretary of State, Sir Patrick Mayhew, in July. He said that the review of the RUC's procedures and training will include those relating to the use of plastic baton rounds. It will take account of the disorders associated with recent marches, including the need to ensure adequate protection of RUC officers faced with determined assaults and petrol bombs. HMI's report will be publicly available later this year.

16. Following events in Northern Ireland during July, the Secretary of State announced to the House of Commons that he would be setting up a review of parades. The aim of this review will be to examine, in the light of evidence received from any interested party and having regard to the particular experience of 1996, the current arrangements for handling public processions and open-air public meetings and associated public order issues in Northern Ireland, including:

- the adequacy of the current legal provisions, and in particular the adequacy of the statutory criteria used in making decisions on public processions and open-air public meetings;

- The powers and responsibilities of the Secretary of State, police and others;

- The possible need for new machinery, both formal and informal, to play a part in determining whether and how certain public processions and open-air public meetings should take place;

- the possible role for, and composition of codes of practice for organizers of and participants in public processions and open-air public meetings;

and to make recommendations by the end of January 1997.

17. The independent review is being chaired by Dr. Peter North QC CBE, Vice Chancellor of Oxford University, and he will be assisted by two clergymen from Northern Ireland, Rev. Fr. Oliver Crilly and Rev. Dr. John Dunlop.

18. In paragraph 11, the FIDH claim that an army vehicle drove over a man, Dermot McShane, during a riot. On the night of Dermot McShane's death serious rioting was taking place in the city centre area of Londonderry which was

where the deceased was first found with serious injuries. Police who tried to render first aid came under attack; one officer was stabbed in the face with a bottle and required 19 stitches.

19. An investigation into the facts surrounding the death of Dermot McShane has been commenced by the RUC and an incident room set up at Waterside police station. The release of any further information relating to the incident at this time may prejudice the findings of the investigations.

20. In view of paragraph 12 of the statement, the Government of the United Kingdom would like to note the scale of attacks on police during July, which included over 8,000 recorded petrol bomb incidents. The number of petrol bombs used were in excess of 8,000 as each attack used more than one bomb. Full figures are not yet available, so these figures could be higher. These petrol bombs, although directed primarily at the security forces, were also used against members of the public and it is fortunate that no one was killed in these incidents. Gun attacks also took place during this period, against the security forces and members of the public.

21. It was therefore inevitable that baton rounds would have been used to protect the lives of both the security forces and members of the public who were not part of the many riots and to control serious disorder. The Government recognized that there has been serious concern in the Catholic community about this.

22. It is understood that the use of plastic baton rounds is not free from risk - no method for controlling public order situations is safe - but there are strict rules governing the use of plastic baton rounds which are intended to minimize the possibility of injury and ensure that the law is respected. RUC Force Instructions state plastic baton rounds can only be used in accordance with the principle of the minimum and reasonable amount of force necessary at the time for the protection of life and property and the preservation of peace, and the prevention and detection of crime. In addition, strict training standards are laid down and the authority for issue and use of this form of riot control is clearly stated.

23. It is the professional judgement of the Chief Constable of the RUC that plastic baton rounds must continue to be available to the security forces as a means of controlling difficult and potentially life-threatening public order situations, especially if the consequences of failure to control the situation are serious and as other methods have proved in the past to be inadequate. The Government fully supports this view.

24. The use of the plastic baton rounds is closely monitored and any serious injuries allegedly caused by baton rounds are fully investigated. Investigations are currently being undertaken into complaints made about the use of baton rounds during recent incidents.